IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.6718 OF 2004
AND
W.P.M.P.NO.7912 OF 2004 AND W.V.M.P.NO.1771 OF 2006

Government of Tamil Nadu
rep. by its Secretary,
Transport Department,
Fort St. George,
Chennai-9. .. Petitioner

Vs.

1.Mallika
2.The Presiding Officer,
Principal Labour Court,
Chennai. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the respondents relating to the order passed in C.P.No.450 of 1997 dated 3.6.2003 on the file of the Principal Labour Court, Chennai and quash the same.

For Petitioner : Mr.V.Arun, AGP

For Respondents: Mr.M.Ramamoorthi

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ORDER

A challenge is made to an order of the second respondent, Labour Court made in C.P.No.450 of 1997, whereby an award for pensionary benefit was made in favour of the legal heir of the deceased employee, the first respondent herein.

2.The court heard the learned counsel on either side. The affidavit filed in support of the writ petition and also the order under challenge are perused.

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3.It is not in controversy that one Thirunavukkarasu, the husband of the first respondent was working in the Transport Corporation from the year 1961 to 1975 as a Mechanic. Subsequently, he was working in Pallavan Transport Corporation till 1988 and he died on 31.8.1994. The first respondent filed claim petition, alleging that he was in Government Service upto 30.4.1975 and from 1.5.1975, he was working in Pallavan Transport Corporation, from where he retired on 30.5.1988 and he was entitled to receive pension from 1.5.1975 till the date of his death, i.e. on 31.8.1994. But, he claimed pension only for the period from 1.6.1988 to 31.1.1991 by mistake in the earlier claim petition in C.P.No.324 of 1991, in which an award was passed for a sum of Rs.12,800/- and hence, as the legal heir of the deceased employee, she was entitled to claim pension for the period from 1.5.1975 to 31.5.1988 and from 1.2.1991 to 31.8.1994, for which period, originally the claim was not made by the deceased employee.

4.That application was countered by the respondent management, stating that he was not a regular employee; that even the deceased has not claimed pensionary benefits for the said period and hence, the petitioner is estopped from claiming the same and the claim was barred by limitation and in order to claim any pensionary benefit, he should have put in 10 years of qualifying service and thus, he was not eligible to get pension. Apart from that, the petitioner has not impleaded Pallavan Transport Corporation, under whom he was actually serving and under these circumstances, the petition has got to be dismissed. The Labour Court made an enquiry and passed an award under challenge.

5.The court is of the considered opinion that the award has got to be set aside on the short ground that the application before the lower court itself was not at all maintainable. The claim petition was filed by the first respondent under Section 33-C(2) of the Industrial Disputes Act, 1947. It is a well settled proposition of law that before making a claim petition under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, there should have been a prior adjudication of the claim. But, in the instant case, the application was filed directly seeking for the relief of computation of pensionary benefits. Now, as narrated above, all were put forth as a defence plea. Hence, it is a fit case where first of all, adjudication has got to be made by the appropriate forum and only then, the claim petition under Section 33-C(2) of the Act would be filed. To exercise the power of the Labour court under Section 33-C(2), there should have been prior adjudication and actually, the Labour Court, when exercise its powers under Section 33-C(2) of the Act, is exactly an executing court and without prior adjudication, it cannot exercise powers under Section 33-C(2) of the Act.

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6.Under these circumstances, giving liberty to the first respondent to put forth her claim before the appropriate forum, the order of the Labour Court, second respondent, is set aside. When such a claim is made by the first respondent before the appropriate forum, the said forum is also directed to consider the delay that has occasioned in placing the dispute, taking into consideration the pendency of the writ petition before this court. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer,
Principal Labour Court,
Chennai.

+ 1 cc to Mr M. Ramamoorthi, Advocate SR. 58961

+ 1 cc to the Government Pleader, SR No.58589

MDR(CO)
SR/25.4.2007

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